

**MEMBERS PRESENT** – Craig Hannafin (CH) Chair, Bert O'Donnell (BO) Vice Chair, Susan Caron (SC), John O'Donnell, Ken Dodge (KD), David Good (DG), Mike Seele, Conservation Agent (MS), Bill Grafton, Conservation Administrator (BG)

**MEMBERS NOT PRESENT** – Joe Ring (JR)

**CALL TO ORDER** – CH motions to open the meeting at 6:30 PM. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

#### **MINUTES**

- Tabled

#### **CHAIRMAN'S ADDRESS**

- Pursuant to Chapter 20 of the Acts of 2021 date June 16, 2021, An Act Relative to Extending Certain COVID 19 Measures Adopted During the State of Emergency regarding suspending certain provisions of the Open Meeting Law, G. L. c. 30A §18, Commission meetings will be conducted both in-person and via remote participation. Members of the public may attend in-person or may participate remotely. While an option for remote attendance and/or participation is being provided as a courtesy to the public, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast, unless required by law.
- CH welcomes new Commissioner DG to the Commission. CH notes Commissioner SC is participating remotely so all votes shall be taken by roll call vote this evening.

#### **BUSINESS**

##### **B1 *de minimis* activity Roll/Review/Ratification**

- a. Lage, 14 E St (Shed relocation, utility equip elevation & location, path adjustment) – Commissioners**
  - The proposed activity is the relocation of two sheds and elevation of HVAC equipment, including air conditioner and generator, to bring the property into compliance with Building Department and Zoning regulations and subsequent footpath adjustment necessary as the existing foot path will be partially covered by the relocated sheds. Four commissioners have reviewed the proposal and found it to be *de minimis* activity. MS recommends approval with the standard conditions.
  - CH motions to approve the proposed activity as *de minimis* activity is with conditions as noted. JO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

##### **B2 Couch Beach BSA Troop 101 Scout Geocache Project – Nathan Boshans**

- Boy Scout Nathan Boshans (NB), Troop 101, present to seek approval for a merit badge project involving the placement of a geocache near the Couch Beach campground. NB presents a detailed and informative power point presentation and notes this project is a requirement to receive the badge. The cache is a small, waterproof container with small coins/tokens, which will be hidden at a specific location whose coordinates are shared on an online map. NB's proposed location is southeast of the campfire site at Couch Beach as depicted on NB's power point slides including multiple aerials of the location, and the cache will be hidden under a tree stump.
- MS as an Eagle Scout compliments NB on his project. BG remarks that NB was well prepared and provided insight into the geocache community requirements.
- CH motions to approve the location of the proposed geocache at Couch Beach. SC second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

##### **B3 SE42-1917/13 South Street-Request For Certificate of Compliance Review – Town Counsel & Commissioners**

- Attorney Mark Fournier (MF) present for estate of property owner along with Town Counsel Robert Galvin (TC). The property is currently up for sale, but has outstanding Order of Conditions. MS visited the property on 6/13 and noted 11 flood vents covered up with plywood. It was additionally noted that the crawl space floor is made

of concrete and is not level. At the previous meeting, it was agreed that the plywood would have to be removed, and a deed restriction obtained certifying that the crawl space would not be used as habitable space. However, Special Condition G specifies that “no concrete slab or other structure shall be constructed or placed on the grade beneath the dwelling.” MF offered that the slab was probably installed to lock the sonotubes in place, and it would be an undue hardship for the Estate to remove the slab.

- MF distributes copies of e-mailed comments from Building Commissioner Andrew Stewart (AS), dated July 7, 2022 stating the structure as built was in compliance with the state Building Code as there was no requirement for coordination between the Wetlands Protection Act and the Building Code at the time of the time of the permitting of this project. The house was built as designed by an engineer, and received approval from the applicable Town departments. MF suggests that Special Condition G was issued in error, as the slab was clearly set forth on the plan and approved as depicted on the plan, and all permitting paperwork issued by the Town in 2005 held that the structure was in compliance with the codes at that time. CH notes the Commission is not directly concerned with building codes, but rather with the fact that a concrete slab was installed under the structure when Special Condition G clearly prohibited it. MF speculates that the concrete would likely break apart under coastal flooding conditions, but CH points out that the concrete itself is impervious regardless of what would happen under such conditions.
- TC notes he has had private clients who wanted to place impervious surface below elevated building in barrier beach/coastal dune, and prior Commissions have always been adamant that the surface could not be impervious. Although the Approved Site Plan circa 2005 depicted the concrete surface, Special Condition G was clear that this was not allowable. TC suggests that everything in the 2005 Site Plan was properly approved except for the concrete surface, but how it acts on this issue is up to the Commission. TC does not disagree with AS’s comments regarding building code compliance but agrees with CH that this is a question of compliance with the Wetlands Protection Act and the Town Bylaws. The Commission has the power to grant a variance, but these should be sparingly granted given the impact of impervious subsurface on abutting properties.
- BO notes AS’s comments that the slab does not contribute to the structural integrity of the building, and the sonotubes alone would sufficiently support the structure.
- DG reads an excerpt from AS’s comments that he suggests the concrete subsurface is pervious, but CH points out this excerpt states that concrete accelerates the flow of flood water, whereas the goal is for floodwaters on barrier beach to be absorbed into the ground.
- BG adds that for effective flood control, all properties in barrier beach/coastal dune need to absorb their respective portion of the storm’s force, and this slab deflects a significant portion of this force and impacts affecting neighboring properties.
- DG maintains that AS’s comments suggest some question of permeability, but CH reiterates that concrete is clearly impervious surface by definition. KD inquires whether the area is previously disturbed, but CH and BG note this is not relevant to the question of what kind of surface is currently under the house.
- MF contends that the house was designed and approved by engineers, who are more qualified than lay Commissioners to make the decision about the slab beneath the structure. CH acknowledges that no current Commissioner is an engineer, but the issue at hand does not concern engineering but rather whether the property was built in compliance with (1) a Special Condition of approval that required no impervious surface beneath the structure, and (2) the state Wetland Protection Act and the Town Bylaw regarding wetlands protection. BG concurs with TC that either the slab must be removed or applicant must seek a variance, but indicates the Conservation Office is willing to work with the applicants within that framework to reach a reasonable solution.
- William Lowney, who is purchasing the property, notes for the record that he is present and his purchase is being held up as a result of this issue. CH is sympathetic but does not feel the Commission can allow the slab to stay based on TC’s feedback. After further discussion, BG suggests that the Commission vote to table the matter to allow applicant to consider their options for a solution, which would include (1) a deed restriction as to the crawl space to cure Special Condition E and (2) removal of all or part of the concrete slab to cure Special Condition G. BG indicates that Conservation staff will assist in any way they can.
- CH motions to table the matter to allow applicant time to explore possible solutions. JO second. Approved 6-0-0 by Roll Call: CH=yes, BO=yes, JO=yes, SC=yes, KD=yes, DG=yes.

**B4 219 Ridge Road- Review of proposed restoration activity for unpermitted fill – Commissioners**

- Tabled

**B5 70 Keene Rd- de minimis activity vs. conservation permit (ATF garage demo/build new shed) – Commissioners**

- Property owner Patrick Dougherty (PD) advises the Commission that he removed an old garage, as required as a condition of his bank loan, without obtaining a Conservation permit; he would now like to put in a 10' by 12' shed behind the garage location, outside the flood zone. BG notes that the property is in buffer zone to salt marsh and partly in LSCSF. BG characterizes removal of the garage as an improvement and suggests its removal and addition of the shed, which will be placed on gravel, could be permitted as a *de minimis* activity with the standard special conditions.
- CH motions to approve the after-the-fact garage demolition, site preparation, and shed construction and placement as *de minimis* activities with conditions as noted. DG second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**B6 1159 Ferry Street/ Review driveway and pavers DMA vs. ROOC – Commissioners**

- Property owner Scott Murphy (SM) received an order of conditions (SE42-2928) for a septic repair; the new system includes a geotextile layer to allow vehicles to park over the system due to lot limitations. Applicant added a layer of pervious pavers to the top of the system that was not referenced in the approved plan. BG suggests this is an example of the utility of these pavers, notes that Mr. Murphy has provided cross-sections and video to show the pavers are pervious and the application of the pervious binder, and recommends approval of their installation as a *de minimis* activity, with the standard special conditions, that can be captured in the As-Built plans in the Request for Certificate of Compliance (RCOC) for SE42-2928. BO supports approval as a *de minimis* activity.
- CH motions to approve the installation of a pervious paver system over the approved septic system as a *de minimis* activity with conditions as noted. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**B7 202 Moraine Street/Review Planning Plan Set for Determination of DMA vs. RAOOC – Commissioners**

- Applicant Kevin Sealund (KS), Sealund Corporation received an order of conditions (SE42-2960) for construction of a 23 lot subdivision with a 24' wide, 1700 ft roadway and associated underground utilities and walking trails. The OOC was approved on May 3, 2022 based on a site plan received at the Conservation Office on May 5, 2022. A meeting with Sealund Corporation, Grady Consulting, Commissioner Ring, Conservation Administrator Grafton and Assistant Planning Director Karen Horne, a number of deviations were discussed that amounted to housekeeping. At BG's requests, Sealund Corporation had Grady Consulting prepare a list of changes between the site plans. The Planning Board subsequently approved the subdivision based on updated site plans dated May 19, 2022 and June 6, 2022; these plans included several deviations from the May 5, 2022 site plan which must be approved by the Commission. BG characterizes the changes on the May 15, 2022 site plan as removal of a hatch from Riverfront area on Lots 10 and 11; the May 19, 2022 site plan changed the description of Black Mountain Pond from "presumed riverine" to "probably riverine" and a was vernal pool changed to "potential vernal pool". BG and Hearing Officer Ring suggest that they can be approved as a *de minimis* activity.
- BG advises the new Commissioners that the subdivision involves a donation of 110 acres to the Town to be held under a Conservation Restriction, the construction of trails to link to an existing system, and continued operation of a nearby cranberry bog.
- Applicant has also requested that a preconstruction d(1) special condition requiring permission to discharge into a MassDOT storm drain on Moraine Street be changed to a "during construction" d(2) condition, as he can't get this permission until work is started.
- CH motions to approve the deviations from the previously approved site plan dated May 5, 2022 to the June 6, 2022 site plan approved by the Planning Department as a *de minimis* activity. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.
- CH motions that the "preconstruction" d(1) special condition requiring permission to discharge into a MassDOT storm drain on Moraine Street be changed to a "during construction" d(2) condition. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

## **SCHEDULED CONTINUED HEARINGS**

### **2950 Gomes, 76 Carolyn Circle (Pier, Dock & Float).....cont. from 10/5/2021 (Rick)**

- The applicant requested a continuation to the 08/03/2022 meeting in writing.
- CH motions to continue the hearing until August 3, 2022. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

### **2958 Speakman, 274 Foster Avenue (Elevate Single Family Home).....cont. from 11/2/2021 (Susan)**

- The applicant requested a continuation to the 08/17/2022 meeting in writing.
- CH motions to continue the hearing until August 17, 2022. JO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

### **2988 Ricciarelli, 1203 Ferry Street (Pier, Ramp & Float).....NEW (Bert)**

- The applicant requested a continuation to the 08/3/2022 meeting in writing.
- CH motions to continue the hearing until August 3, 2022. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

### **2987 Bethanis, 1184 Ferry Street (Pier, Ramp & Float).....NEW (Joe)**

- The applicant requested a continuation to the 08/3/2022 meeting in writing.
- CH motions to continue the hearing until August 3, 2022. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

## **PUBLIC HEARINGS AND MEETINGS**

### **22-24 Spellman, 769 Moraine Street (Construct a new fence).....NEW (Bert)**

- CH reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- Applicant Patrick Spellman (PS) present; PS wishes to enclose his backyard with a 6' high fence, with a gate near the garage, in order to keep their dog in the yard. MS visited the site; the work would occur on pre-disturbed lawn in buffer zone to BVW.
- BG notes that there is an ongoing condition associated with Certificate of Compliance SE42-2526 requiring no mowing or encroachment beyond 65 feet from the house respecting this Ongoing Conditions, but the proposed fence is 60' from the house. BG thanks applicant for being a good steward.
- BO asks for comments from the public; none.
- Special conditions of approval will require a 6" gap between the fence bottom and ground to allow wildlife movement and continue to respect the 65' no-disturb area in back of the house.
- BO motions to issue a DOA, Pos. #5, Neg. # 2, with special conditions drafted by BG. KD second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

### **22-25 McCue, 109 Monitor Road (Construct a gravel driveway).....NEW (Craig)**

- CH reads the legal ad and, as Hearing Officer, confirms administrative requirements are complete.
- Applicant Lindsey McCue present. The proposed activity is construction of an additional driveway in front of her house, composed of pervious crushed stone and river rock. The work area is existing lawn in LSCSF (AE9 flood zone).
- CH visited the property and has no issues.
- CH asks for comments from the public; none.
- The standard conditions of approval will apply.
- CH motions to issue a DOA, Pos. #5, Neg. # 2, with special conditions drafted by BG. DG second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

### **22-26 Rose, 23 Parker Street (Landscaping & Stair Replacement).....NEW (Susan)**

- CH reads the legal ad. Hearing Officer SC confirms administrative requirements are complete.

- Applicant Dan Rose (DR) present. The proposed activity is landscaping work and replacement of a retaining wall, front deck stairs, and pervious paver footpath. The work area lies within barrier beach, LSCSF, and VE13 flood zone. BG and MS visited the property and observed some of the work underway. Applicant was advised that a permit was needed, and has been cooperative since then. Building Commissioner AS has advised that flood plan and building permits would be required.
- BG states that the work/activity was brought to Conservation's attention as an official complaint. Additionally, DR has been coordinating with the Building Department to ensure a seamless permitting process & project resumption.
- SC has no concerns about the project provided that all permits are obtained.
- SC asks for comments from the public; none.
- The standard conditions of approval will apply.
- SC motions to issue a DOA, Pos. #5, Neg. # 2, with special conditions drafted by BG. CH second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

#### **22-27 Town of Marshfield, Corn Hill Lane (Conservation Land along road) (Tree removal).....NEW (Craig)**

- CH reads the legal ad and, as Hearing Officer, confirms administrative requirements are complete as the Town is tax exempt.
- The proposed activity is the removal of diseased/damaged trees in a 900 ft stretch of Corn Hill Lane in Conservation land within the 25-50 buffer to a BVW. The work was proposed by Karen McArdle (KM), 100 Corn Hill Lane, as many trees were damaged in the October 2021 storm, including one that blocked off the road entirely. As DPW is unavailable to take on the work, BG worked with KM and Town Administrator Mike Maresco (MM) to come up with a three-phase strategy including (1) removal of invasive species 6-15 ft. from the edge of road; (2) dropping/chipping of trees by a contractor, spreading the chips on the cleared area; and (3) planting of the cleared area with native plants including high brush blueberry and eastern red cedar. The cost of this work, including crane, chipper, hauler, and climber, will be split between the Town and KM.
- John Zimmer (JZ), South River Environmental, is handling the delineation of the work area and RDA preparation. JZ notes that about 20-25 hazard trees, at risk of falling during another storm, were identified.
- MM states the project is a good example of collaboration between the Conservation Department, Town, and abutting residents to ensure that trees on Conservation land do not pose a hazard. KM briefly discusses the conditions that gave rise to her reaching out to BG.
- BG notes that volunteers will assist with the clearing and planting phases, and some of the plantings will be transplanted from other Conservation properties. The Commission has already voted to authorize the work on the Conservation land. BG states that DPW Superintendent Tom Reynolds (TR) offered the use of DPW facilities to dispose of the trees.
- CH asks for comments from the public; none.
- The standard conditions will apply plus a special condition to clear cut trees to appropriate heights and leave the root systems in the ground.
- CH motions to issue a DOA, Pos. #5, Neg. # 2, with special conditions drafted by BG. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

#### **22-28 Town of Marshfield, 172 South River (ATF Demolition of Home & Barn).....NEW (Craig)**

- CH reads the legal ad. Hearing Officer CH confirms administrative requirements are complete as the Town is tax exempt.
- The company hired for demolition of structures at Pratt Farm left behind significant safety issues, including loose nails, broken glass, a steep drop-off in back of the garage slab, and unstable retaining walls. During the May 3, 2022 Commission Public Meeting, the Commission ratified the approval and issuance of an emergency certification to complete the demolition and cleanup work, but a Town official appealed the matter to MassDEP, who ruled in the Commission's favor but required the submittal of an after-the-fact conservation permit within 30 days of the expiration of the emergency certification.
- John Zimmer (JZ), South River Environmental has been contracted to prepare the delineation and application. JZ briefly reviews the permitting history and resource areas associated with the site, including a tributary to the South River, two areas of BVW, and one IVW by the driveway off of South River Street. Some grading, site cleanup, and

posting of conservation markers with guidance of the Conservation Administrator or Agent prior to reopening the property to the public remains to be done.

- Town Administrator, Mike Maresco (MM) thanks JZ and BG for their efforts to manage the conservation permitting, as the area was turning into a dumping ground and attracting vandals so action was needed. JZ notes that there is some interest in repurposing the site into an ADA compliant sitting area, one way entrance and exit with some additional parking and vegetative enhancement.
- CH questions the establishment of a parking area referenced in the project narrative, as it was her understanding that the Willow Street entrance would be the only vehicular access. SC suggests any future impacts to the site or proposed projects will need to come before Conservation with separate permitting. BO agrees with CH and SC about not including parking or other improvements in this RDA. BO requests that this be included in the minutes for future reference. BO also notes that the Willow Street parking area is rarely full.
- BO notes that the Willow Street parking area is rarely full.
- BG notes that the delineation of the IVW by the entrance, which will be good for three years, opens the door to future improvements the Town may want to pursue, and allows the Building Department to close out its own permitting. BG adds there will be no further activity on the property beyond the grading, cleaning, and marker posting described by JZ at this time.
- CH asks for comments from the public; none.
- The standard conditions of approval will apply.
- CH motions to issue a DOA, Pos. #5, Neg. # 2, with special conditions drafted by BG. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**29 Town of Marshfield, 1837 Ocean Street (Above Ground Storage Tank & Generator).....NEW (Susan)**

- CH reads the legal ad. CH confirms abutter notification complete and the Town is tax exempt. BG advises that this hearing cannot close tonight due to lack of a MassDEP Wetlands Protection Act File Number but suggests that the project be discussed so as to expedite approval at the next meeting.
- The filing is an After the Fact Notice of Intent for the installation of a 4' by 8' emergency generator and self-contained above-ground, double-walled diesel storage tank within inland bank and riverfront area. South River Environmental has been contracted to prepare the delineation and application. JZ notes that the generator became available when the old police station was decommissioned, and has been moved to a site behind the Ventress Library to provide backup power to the building. There is no BVW associated with the stretch of riverbank closest to the generator. The generator currently sits on a gravel pad; they would like to elevate it onto a concrete pad. As part of the work, they will post conservation markers along the 25 ft buffer line to the inland bank and put down some conservation seed mix to boost the variety of native plants in the area.
- Town Administrator, Mike Maresco (MM) thanks John Zimmer (JZ) South River Environmental for his efforts and notes that Facilities Director Fred Russell (FR) will ensure that all is in compliance. The generator will allow the library to be used as a heating/cooling center in the event of power outages.
- BG adds that Town Engineer Rod Procaccino (RP) reviewed the project and suggested placement on a concrete pad; Marshfield Fire Department agrees. A signed Illicit Discharge statement, Storm Water Standard 10 will be needed as well as a Spill Prevention Contamination Containment Plan (SPCCP) within 30 days of issuance of the OOC. BG thanks all Town Departments involved for their cooperation on this project.
- Building Commissioner AS has indicated that the project will require gas and electrical permits.
- SC asks for comments from the public; none.
- SC motions to continue the hearing until August 3, 2022 to allow time for MassDEP to generate a wetlands protection file notification number. CH second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**29 Vacirca, 16 Wilson Road (Construction of Additions).....NEW (Bert)**

- CH reads the legal ad. BG advises that this hearing cannot close tonight due to lack of a MassDEP Wetlands Protection Act File Number due to a lack of technical review but suggests that the project be discussed so as to expedite approval at the next meeting.
- Rick Servant, Stenbeck & Taylor, present for applicant. The proposed activity is the construction of additions to an existing SFH. The lot lies in barrier beach, LSCSF, and coastal dune. One 8' by 10' addition is on sonotubes and a

16' by 20' addition will be on a concrete foundation with flood vents. The project will result in about 144' increase in impervious surface.

- BG visited the site and has no issues with the wetland line to IVW and notes the property is in BB/CD. The addition on the concrete foundation may trigger a "substantial improvement" determination by the Building Commissioner which would affect the project; BG suggests that comments from the Building Department regarding this issue will be necessary in order to close. Applicant will also need flood plain and building permits according to the Building Commissioner, and BG suggests that applicant apply for these before the next Commission hearing. RS indicates he has been in touch with Building Department regarding these permits. They are before ZBA on August 9, 2022. BG and DG suggest that the current Town permitting matrix should be updated to add in the flood plain permit and provide applicants with the proper permit sequencing. Posting an updated permitting matrix including the flood plain permit would be very helpful for the public awareness and permitting compliance.
- BO asks for comments from the public; none.
- BO motions to continue the hearing until August 3, 2022 to allow time for MassDEP to generate a Wetlands Protection Act File Number. JO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**29 Sarnie, 17 West Street (Raze & Rebuild Single Family Home).....NEW (Bert)**

- CH reads the legal ad. BG advises that this hearing cannot close tonight due to lack of a MassDEP Wetlands Protection Act File Number but suggests that the project be discussed so as to expedite approval at the next meeting.
- Rick Servant (RS), Stenbeck & Taylor, present for applicant. The proposed activity is to raze and rebuild of a single-family home. The lot has a BVW that wraps around the back and southerly side of the property, and is in AE9 flood zone. The new structure will have a poured concrete foundation with flood venting. They have applied for building and flood plain permits. As part of the project, they will also convert an existing paved driveway to a pervious shell or stone driveway; thus, the project as a whole will result in a 50 sq ft decrease in impervious surface. The new structure will have a crawl space that will not be utilized as living space or storage, and is not moving closer to any wetlands.
- BG visited the site on 7/13 and speaks favorably as to the decrease in impervious surface. Given the configuration of the lot and surrounding wetlands, there is not much room for mitigation. BG requests a cross-section showing what will be under the new driveway; RS will add this to the site plan.
- BO asks for comments from the public; none.
- BO motions to continue the hearing until August 3, 2022 to allow time for MassDEP to generate a Wetlands Protection Act File Number. KD second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**29 Quinn, 18 Billings Street (Construction of addition & deck).....NEW (Bert)**

- CH reads the legal ad. BG advises that this hearing cannot close tonight due to lack of a MassDEP Wetlands Protection Act File Number but suggests that the project be discussed so as to expedite approval at the next meeting.
- Rick Servant (RS), Stenbeck & Taylor, present for applicant. The proposed activity is the construction of a 10' by 22' addition and deck to an existing SFH. The lot lies in barrier beach, coastal dune, and AE9 flood zone. The addition will be built on helical piles and the area underneath will remain open. As part of the project, they will be removing a concrete walkway, which will reduce the overall increase in impervious surface.
- BO asks what kind of surface is proposed for under the deck and addition? RS indicates it will be pervious turf or gravel. BG suggests that mitigation is not required in this case given the addition is on piles; noting that the homeowners would like to keep the concrete driveway and shed based which could partially or completely removed as mitigation. Applicant will need a building and flood plain permit according to the Building Commissioner, and BG suggests that RS provide evidence that they have filed for these.
- BO asks for comments from the public; none.
- BO motions to continue the hearing until August 3, 2022 to allow time for MassDEP to generate a Wetlands Protection Act File Number. JO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**2990 Powell, 17 Oregon Road (Garage, Deck & Addition).....cont. from 7/6/2022 (Craig)**

- Continued hearing; CH Hearing Officer. John Zimmer (JZ), South River Environmental, present for applicant along with Dick Rockwood (DR), Rockwood Design and homeowner, Frank Powell (FP). Also present is Rebecca Haney (RH), Mass. Coastal Zone Management. BG notes that Commissioners SC and KD signed Mullin affidavits, allowing them to participate.
- The proposed activity is construction of an addition, deck, and garage on previously disturbed land currently used as a parking area and sports court. The deck would be constructed on sonotubes and the addition would be on a solid foundation with smart vents; the garage will be on a slab with smart vents, and the driveway into the garage will be constructed of permeable pavers. The project would increase the impervious surface on the property by 2790 sq. ft., but they will install two drywells to capture the increased runoff. A USDA NRCS soil survey identified sandy soils in the area, but MassDEP mapping did not flag the property as barrier beach or coastal dune. The previous hearing was continued for receipt of MassDEP Wetland Protection Act File Number, mitigation for the increase in impervious surface, and soil survey to determine whether the lot lies in coastal dune.
- JZ notes that when MassDEP issued the file number, they identified the lot as being in LSCSF, not as coastal dune. Since the previous hearing, he has evaluated the site based on the WPA's definition of coastal dune as a "natural hill, mound or ridge of sediment landward of a coastal beach deposited by wind action or storm over wash" (the local Bylaw uses the same definition), noting that the property is relatively flat and the nearby seawall precludes the deposition of sand from the beach landward of the seawall. The soils are sandy, but there is no dune-type form to the area. Thus, JZ holds the site does not meet the definition of coastal dune in 310 CMR 10.28. Likewise, mapping from a recent resiliency workshop of coastal resources in the Town does not show the area to be coastal dune. JZ also cites recent projects in the area, including 37 Constitution and 24 Oregon that received permits for a solid foundation with vents. Comments from Building Commissioner Andrew Stewart (AS) indicate that the project is compliant from a building code perspective. JZ also notes that he has updated the site plan to include a cross-section of the proposed permeable pavers and 2000 sq. ft. of mitigation plantings around the perimeter of the property, avoiding the already vegetated areas. He has removed the deck area from the impervious table, as there will be pervious surface beneath the proposed deck and spacing between the decking.
- BG notes that dunes can include artificial, man-made soils and can show up in unexpected places. BG points out that the permitted cases cited by JZ and AS were for raze and rebuilds minor impervious deviations in the same footprint as detailed in the impervious table, whereas this project proposes a large addition and decking in an environment that has properties of a dune, and suggests that a soil survey is the only way to know whether or not the area is a coastal dune. BG also notes that Chair Kilcoyne's and his attendance at a resiliency workshop does not constitute endorsement of all mappings or information contained in the workshop. He invited RH to explain the importance of a soil survey in this particular environment.
- RH indicates that the mapping referenced by JZ was done by remote sensing and does not indicate exact resource area boundaries; thus, the guidance provided by MassDEP is that the mapping is not conclusive, and there is no question that at this site, the subsurface sediments should be examined, as this is what defines a dune regardless of whether an area is flat or if there is a seawall in front of it. RH is happy to visit the site to assist with the soil analysis.
- BG suggests it would be to the benefit of all involved, including applicant, to do the soil survey and settle the issue. BG also suggests that the Commission hear from AS as to whether the project would constitute a substantial improvement.
- JZ contends this site does not meet the WPA or Bylaw definition of "coastal dune" as there is no "natural hill, mound or ridge of sediment." BG replies that a previous presentation by RH instructed that if an area landward of a coastal beach has erodible soils, even if flattened or under concrete, is potentially a dune, as dunes naturally migrate, erode, and accrete. RH states that the site is still an elevated landform landward of beach, in keeping with the WPA definition, despite the alterations to the area due to the seawall and other development. The way to settle the issue is to look at the subsurface sediments, which can be done relatively inexpensively. BG suggests that this is part of the "clear and convincing information" the Commission needs to make a determination.
- DG agrees with JZ that the site does not meet the regulatory definition of a coastal dune and suggests that the need for a soil survey should be written into the regulation if needed. KD asks if the Commission has required soil sampling for all applicants in the past? BG indicates it is not an across-the-board requirement, but has been done at 0 Constellation, a nearby area with characteristics suggestive of a coastal dune; the subsequent finding of coastal dune was ultimately upheld by Land Court. BG is trying to be conservative in limiting such testing to areas



having potential coastal dune properties but this is one area that needs testing given the large area of undeveloped lot and the potential for storm water displacement if developed improperly.

- BO asks what is required to do the soil survey? RH indicates it can be done using an auger to pull and examine the subsurface sediments; this can be done quickly and easily; usually these sediments are accessible 1-2 feet down; if significant fill was brought to the site, it may be necessary to test at several locations. RH adds that this testing is done on a routine basis and is not a complicated process.
- Applicant Frank Powell (FP), 17 Oregon Road states he has owned the property since 2013 and it has not changed over this period, and they have had no floodwater from the ocean or otherwise. The lot is very large, and even with the addition as proposed, a significant amount of open space will remain. FP questions what a soil survey would actually reveal and suggests the test results would be subject to interpretation. BO notes that the soil survey is relatively easy to do and may prove the lot is not coastal dune. FP states that if he has to do a soil survey, then everyone in Town should be subject to the same process, and objects to being asked to do something his neighbors aren't. CH points out that none of his neighbors currently have any projects before the Commission.
- BG adds that in Commission permitting, the burden of proof is on the applicant to provide clear and convincing information that allows the Commission to make a determination regarding a project, and in this particular case, this includes soil survey, and it is the Commission's job to require that it be provided before making a determination. BO points out to FP that the testing does not appear to be excessive in cost and may not be binding. BG suggests that JZ, BG and RH could oversee the soil survey process at little additional cost to applicant, and the results could be beneficial to FP and the neighboring properties. The involvement of public sector professionals adds credibility at no cost.
- CH asks JZ about the status of their building and flood plain permitting? CH suggests that they obtain a determination as to whether the project would count as a substantial improvement. BG adds that applicants should seek a flood plain permit prior to all others according to the Building Commissioner, and hopes that this message will be better communicated generally as all will benefit. Thus, BG recommends that the applicant submit a building and flood plain permit applications as soon as possible so the Building Commissioner has the documentation necessary to perform his analysis required to render a determination.
- DR notes that he reviewed the project in detail with Building Commissioner Andrew Stewart (AS) six months prior and drew up plans based on their review of the resource area maps. DG & FP ask if the process has changed since then? CH advises that the flood plain permit went active on June 1st of this year; BG adds that the permit was approved by the Select Board in February of this year; previously provided guidance regarding permitting flow and timing may need to be updated accordingly. DR stated that he conformed his design specifications according to a review of mapped resource areas based on conversations with the Building Commissioner. DR was unaware that the flood plain permit is required first despite his conversations with the Building Commissioner. DG stated that during this review, there was no discussion of additional permitting. DR inquired if this is new?
- After further discussion, CH indicates she still wants to see a soil survey and asks if applicant is amenable. FP opines it should be done to the whole neighborhood. JZ points out that the underlying soil type of the entire area is mapped as "sand," and thus, if coastal dune is defined primarily by soil type, the entire area would be classified as coastal dune. CH asks RH if she agrees? RH would not jump to that conclusion and states each project must be looked at individually. This particular lot is close to nearby coastal dune area, but this does not mean that the dune extends over the entire area.
- CH polls the Commission as to whether to require a soil survey: CH yes; SC yes; BO yes; JO yes; KD no, should be required of everyone in order to be fair; DG no. BG cautions the Commission just to say "I don't want a soil survey" without further reference to fairness, to avoid having to require a survey of every applicant in the future, which BG does not want to do. Commissioner consensus is 4-2-0 in favor of a soil survey.
- KD asks if the matter could be continued without prejudice? BG indicates that the matter can simply be continued to a date certain of the applicant's choosing.
- DG would like some additional resources or training regarding soil sampling and when they are needed. BG agrees additional training would be beneficial. CH asks consultant William Finn (WF) to gather information from the Plymouth County Soil Survey and work with BG to put together some training? BG suggests that the Commission use its discretion in requesting soil surveys moving forward, and indicates he will use the same approach in recommending them to the Commissioners. BG states that he would like to find a standard for requiring a soil survey and prefers to be conservative in the requirement. All discuss how to standardize the review process going

forward as this would be further pertinent to the flood plain permit conservation review regarding soil survey requirements.

- DG questions whether a soil survey would yield a false positive due to wind activity; RH states that the point of digging down at least a foot or two is to see what the origin of the material is; this risk can also be addressed by taking several samples. There are soil scientists who could provide additional training for the Commission.
- WF recommends to the Commission that it take BG's suggestion, and that BG, JZ, and RH conduct the sampling, which is a simple process. BG adds that the Commissioners are welcome to witness. FP claims that the Commission is setting a precedent regarding testing that was not in place previously; CH states the Commission is setting no precedents. FP invites the Commissioners to visit his property, as he states it has no characteristics of a dune; BG agrees that a site visit would be helpful to all.
- JZ asks for a continuation to August 17, 2022, as FP will be away until August 9, 2022. CH recommends that applicant follow up with AS regarding the building and flood plain permits.
- CH motions to continue the hearing until August 17, 2022 to allow time for the applicant to provide the results of a soil survey. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**2989 B.G.H.M. Inc, LLC, 239 Dyke Road (Repair Bulkhead).....cont. from 7/6/2022 (Craig)**

- Continued hearing; CH Hearing Officer.
- Tom Pozerski (TP), Merrill Engineers, present for applicant. The proposed activity is the repair and reinforcement of a bulkhead at the Brewer Green Harbor Marina. The work area lies in Land Under Ocean and flood plain (VE13/AE13). He is working with Dave Hill (DH), MassDEP Ch 91, regarding whether Chapter 91 permitting is satisfied or not; TP believes one will not be required due to the nature of the structure, but they will comply with MassDEP Ch. 91 and MassDMF recommendations. Given recent renovations to the Marina, they will remove all ramps, etc., in front of the structure, deploy a floating debris barrier, and then clean/repair those blocks that have deteriorated. The blocks will be secured with rebar and steel mounting plates will be attached. A land-based, rather than barge-based, pile driver is expected to be utilized.
- BG thanks TP for his detailed submission and notes to the Commission that the objective of the work is to preserve the old material of the bulkhead, which is effective, and tighten it up. Other maintenance/modernization projects at the property are underway such as the facilities and storm water infrastructure. Regarding possible changes, BG advises TP to reappear before the Commission regarding any changes from the final approved plans, or submit updated plans by noon on Friday if he is certain the changes that will be made. A hardcopy of the site plan was provided to the Harbormaster, who did not provide any comments.
- CH notes that applicant will need to obtain a building and flood plain permit from Building Commissioner, Andrew Stewart (AS). TP states that he has 28 years of experience with the USACE and coordinated with AS on the boat storage building on the subject site. TP states that the work got "stuck" and he helped coordinate the solution to AS's flood plain concerns. TP stated that the current project was a tough one but the finished product will be much improved as he coordinated with Dave Hill at MassDEP Ch. 91 addressing his construction concerns.
- BO confirms that no concrete will be poured on-site. BG notes that this project and ongoing work at the site will be a big improvement to the marina. DG appreciates the improvements that he has observed over the years.
- CH asks for comments from the public; none.
- The standard conditions of approval will apply plus MassDMF recommendations and Marshfield Conservation Commission special conditions requiring submission of new or amended Chapter 91 license and ensure no debris is released into the Green Harbor River, as much work as possible is performed on the upland section of the site, no seaward encroachment of the bulkhead beyond what is depicted on the approved site plan, and submission of updated site plan by noon on July 22, 2022. Ongoing Conditions within d(3) Post Construction Ongoing Conditions including maintenance or emergency repairs are approved as per the original Order of Conditions in perpetuity.
- CH motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. DG second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**2977 Marshfield Hills Realty Trust, 2205 Main Street (Replace Boat Ramp).....cont. from 5/3/2022 (Bert)**

- The applicant requested a continuation to the 08/17/2022 meeting in writing.
- CH motions to continue the hearing until August 17, 2022. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

## **REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS**

### **1743 Walker, 459 Highland Street [COC]**

- BG visited the site and noted a number of apparently unpermitted structures, including retaining walls, a runoff pipe, brick patio, deck, expanded pool footprint, pool fencing, and fill and grade changes; he also observed debris in the wetlands and setback. These issues were to have been addressed through an after-the-fact NOI, which has not been submitted to date. BG spoke with new owner on 7/12/2022 who is working with Stenbeck & Taylor to advance the After-The-Fact Notice of Intent (ATF NOI), and recommends that the request be tabled to allow time for the ATF NOI submittal.
- CH motions to table the matter to the August 3, 2022 meeting to allow for submission and approval of the ATF NOI. SC second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

### **1917 Francis, 13 South Street [COC]**

- Tabled as per discussion in B3.
- CH motions to table the matter to the August 3, 2022 meeting pending receipt of response regarding Special Conditions E and G. DG second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

### **2773 Escobar (now Monahan), 1185 Ferry Street [COC]**

- Applicant has been provided the required submittal package, but no documentation has been provided to date.
- CH motions to table the matter to the August 3, 2022 meeting to allow for submission of the required documentation. JO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

### **1137 Ahern, 74 Ridge Road [COC]**

- MS visited the site on 7/19/22; BG and MS contacted Rick Servant, Stenbeck & Taylor who prepared the RCOC submittal and verified compliance with special conditions D-F of the OOC and recommended issuance of the COC.
- CH motions to issue a complete COC for the property. JO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

## **ENFORCEMENT ORDERS**

Smith, 38 Liberty Street (11/19/18 KS will set early Dec visit); White, Bednarz / Nouza, 65 Ireland Road (Unpermitted Cutting <= 50 ft.): Tamara Macuch, 237 Webster Avenue; Stifter, 102 Bartlett's Island (unpermitted revetment wall)

### **B8 Homsy, 987 Ocean Street (unpermitted removal in RF, BVW & buffer zone) – Chris Homsy & Commissioners**

- CH motions to table the matter to the August 3, 2022 meeting to allow for submission and approval of additional documentation. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

**ADJOURNMENT** – CH makes a motion to close the hearing at 9:50 PM. BO second. Approved 6-0-0 by Roll Call: CH-yes, BO-yes, JO-yes, SC-yes, KD-yes, DG-yes.

Respectfully submitted,  
Liz Anoja, Conservation Administrative Clerk

Marshfield Conservation Commission  
Bill Grafton, Conservation Administrator  
Mike Seele, Conservation Agent

Craig Hannafin, Chair  
Joe Ring  
John O'Donnell  
David J. Good

Bert O'Donnell, Vice Chair  
Susan Caron  
Ken Dodge